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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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STATE OF INDIANA,
Appellee-Plaintiff.

May 2, 2008

MATHIAS, Judge

Stephen D. Walker (“Walker”) was convicted in Allen Superior Court of Class D felony domestic battery and sentenced to the advisory term of one and one-half years. Walker appeals and claims that the State failed to present evidence sufficient to rebut his claim of self-defense. We affirm.

Facts and Procedural History

Walker and Kimiko Germaine, who had two children together, had recently purchased a car. Both were obligated under the loan agreement for the car, but Walker had possession of the car. Upset that Walker had not been making payments on the loan or maintaining insurance upon the car, Ms. Germaine decided to go to Walker’s residence and take the car. On October 27, 2006, Ms. Germaine entered Walker’s residence using a key which Walker had given her and took the keys to the car. Walker was at home and confronted her about the keys. The two began to argue about the car, and a fight began.

Walker slammed Ms. Germaine’s head on the floor and pulled her hair, ripping out one of Ms. Germaine’s earrings. Walker also put Ms. Germaine in a choke-hold. Walker then took the keys to Ms. Germaine’s car and refused to give them back. When Ms. Germaine tried to leave the house, Walker blocked her. During the fight, Ms. Germaine’s sister called Ms. Germaine’s mobile phone. Ms. Germaine answered, but was out of breath and could barely speak. The sister heard Walker and Ms. Germaine arguing and heard Ms. Germaine say, “you have already f’ing choked me one time.” Tr. p. 126.

The police were called to Walker’s house on a report of a suspected domestic battery. When they arrived and knocked on the door, no one answered. The police then

went in the house through the back door, where they found Ms. Germaine running out of the house. Walker came out of the bedroom, upset that the police were in his home. Ms. Germaine was crying, had trouble breathing, and told the police that Walker had choked her. The police observed red marks on Ms. Germaine's neck. The police then arrested Walker, who made no claim of injuries or that he had been attacked. Ms. Germaine was taken to the hospital, where medical personnel observed several injuries, including petechial hemorrhaging, bruises, and red marks on the neck consistent with strangulation.

Walker later told one of his friends about his fight with Ms. Germaine, stating that he had spun her around, put his arm around her neck, and pulled back. Walker said that when he pulled on Ms. Germaine's neck, he heard a "pop," and "thought he killed the f***ing bitch." Tr. p. 163. Walker told his friend that Ms. Germaine had tried to call the police for help, but that he prevented her from doing so.

On December 6, 2006, the State charged Walker with Class D felony criminal confinement, Class D felony strangulation, and Class D felony domestic battery. A jury trial was held on September 25, 2007. Walker testified and claimed that, on the day in question, he had been sleeping when Ms. Germaine woke him up by hitting him. Walker claimed he only tried to defend himself against Ms. Germaine, whom he said was angry because he had a new girlfriend. At the conclusion of the trial, the jury found Walker guilty of domestic battery, but not guilty on the remaining charges. Walker then stipulated that he had a previous conviction for domestic battery against Ms. Germaine, which acted to elevate his domestic battery conviction to a Class D felony. Walker now appeals.

Discussion and Decision

Walker argues that the State failed to rebut his claim of self-defense. A valid claim of self-defense is a legal justification for an otherwise criminal act. Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003). Generally, a person is justified in using reasonable force against another person to protect himself or a third person from what he reasonably believes to be the imminent use of unlawful force. Ind. Code § 35-41-3-2(a) (2004 & Supp. 2007). A claim of self-defense requires a defendant to have acted without fault, been in a place where he or she had a right to be, and been in reasonable fear or apprehension of bodily harm.¹ Henson, 786 N.E.2d at 277.

When a defendant presents a claim of self-defense, and this claim finds support in the evidence, the State bears the burden of negating at least one of the necessary elements of self-defense. Wilson v. State, 770 N.E.2d 799, 801 (Ind. 2002). The State may satisfy this burden by either rebutting the defense directly or by relying on the sufficiency of evidence in its case-in-chief. Butler v. State, 547 N.E.2d 270, 271 (Ind. 1989). On appeal, we review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as for any claim of insufficient evidence, i.e., we neither

¹ The State claims that, in order to prevail in a claim of self-defense, Walker was required to show that he had a reasonable fear of death or great bodily harm. This is true with regard to a claim of self-defense where deadly force was used. See I.C. § 35-41-3-2(a) (“a person is . . . justified in using deadly force . . . if the person reasonably believes that the force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony.”); Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002) (listing “reasonable fear of death or great bodily harm” among the elements of self-defense in case where defendant claimed shooting of victim was self-defense). It is not true, however, in cases where, as here, deadly force was not used. See I.C. § 35-41-3-2(a) (“a person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.”); Henson, 786 N.E.2d at 277 (in case involving battery by body waste, defendant was required to show only a “reasonable fear or apprehension of bodily harm.”).

reweigh the evidence nor judge the credibility of the witnesses. Wilson, 770 N.E.2d at 801.

Here, Walker claims that he was in a place where he had a right to be, acted without fault, and was in reasonable fear of bodily harm because, he claims, Ms. Germaine was the aggressor. In support of his claim, Walker notes that the jury found him not guilty of criminal confinement and strangulation. He therefore concludes that Ms. Germaine “had some serious credibility problems.” Appellant’s Br. p. 3.

Walker’s argument is simply an invitation that we reweigh the evidence and judge the credibility of witnesses, which we will not do. Moreover, Walker does not deny that he got into a physical altercation with Ms. Germaine. Whether or not he was the initial aggressor, a mutual combatant must declare an armistice before he or she may claim self-defense. Wilson, 770 N.E.2d at 801 (citing I.C. § 35-41-3-2(e)(3)). There is no evidence that Walker did so in the present case. The jury was in no way bound to believe Walker’s claim and was free to conclude that he did not act in self-defense.

Affirmed.

MAY, J., and VAIDIK, J., concur.